

Judge: Honorable Mary Jo Heston
Chapter: 7

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

WILLIAM C. GIBSON AND LAUREL
GIBSON,

Plaintiffs,

v.

STEPHEN LEE ATEs,

Defendant/Debtor.

and

KELLY ANN BRACE,

Defendant/Non-Debtor.

Case No. 21-41090-MJH

Chapter 7

Adv. Case No. 21-04051-MJH

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBTS
PURSUANT TO 11 U.S.C. § 523(a)(2)(A),
11 U.S.C. § 523(a)(4), 11 U.S.C. § 523(a)(6),
AND 11 U.S.C. § 727 (a)(3) AND TO
DETERMINE LIABILITY OF
DEFENDANTS AND DAMAGES OWED
TO PLAINTIFFS BY DEBTOR STEPHEN
LEE ATEs AND THIRD-PARTY KELLY
ANN BRACE IN “RELATED CLAIMS”
UNDER SUPPLEMENTAL
JURISDICTION

COMPLAINT

Plaintiffs, William C. Gibson and Laurel Gibson (“Plaintiffs”), bring this adversary

ADVERSARY COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBTS
PURSUANT TO 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(4), 11 U.S.C. § 523(a)(6) AND
11 U.S.C. § 727(a)(3) AND FOR OTHER RELIEF - PAGE 1

Cause No. No. 21-41090-MJH

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1 proceeding pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), 523(a)(6), AND 11 U.S.C. §
2 727(a)(3) seeking an order/judgment determining that (1) certain claims for debts asserted
3 against the Debtor and Defendant Stephen Lee Ates (hereinafter referred to as “Ates,”
4 “Stephen Ates,” “Mr. Ates,” and the “Debtor”) are excepted from discharge, (2) the liability
5 of Debtor Stephen Lee Ates and third-party Kelly Ann Brace to Plaintiffs for Washington
6 state law claims, and (3) the amount of damages (including attorney’s fees) Plaintiffs are
7 entitled to recover from Stephen Lee Ates and Kelly Ann Brace under Washington State Law
8 claims.

9 JURISDICTION AND VENUE

10 1. This Court has subject matter jurisdiction over the claims against the Debtor
11 Ates pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523. This adversary proceeding
12 against Ates is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(H) and (I). This Court
13 has “related to” subject matter jurisdiction over the Plaintiffs’ “non-core” claim against third-
14 party Kelly Ann Brace and non-core claims against Ates via supplemental jurisdiction under
15 28 U.S.C. § 157(b)(3) and (c)(1). Pursuant to Rule 7008 of the Federal Rules of Bankruptcy
16 Procedure, Plaintiffs do consent to entry of final orders or judgment by the bankruptcy court.

17 2. Venue in the Western District of Washington is proper under 28 U.S.C. §
18 1409(a).

19 3. This Adversary Proceeding relates to a Chapter 7 petition filed by the
20 Defendant Ates/Debtor now pending in this Court, *In Re Stephen Lee Ates*, Case No. 21-
21 41090-MJH (the “Ates Bankruptcy Case”). Plaintiffs are also concurrently pursuing partially
22 secured claims (pursuant to a writ of attachment) against the Debtor Ates and Defendant
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1 Kelly Ann Brace in *William C. Gibson, et ux., v. Family Classic Homes, Inc. et al.*, Pierce
2 County Superior Court, Case No. 20-2-05781-2 (the “State Court Action”) which is currently
3 stayed.

4 4. The “related to” claims in the State Court Action and contained in this
5 Complaint include equitable and monetary relief in favor of the Plaintiffs and against the
6 Debtor and Defendant Kelly Ann Brace, individually and in their Marital Community, jointly
7 and severally, in the amount of \$482,089.00 (at a minimum, not including other statutorily
8 based attorney’s fees recoverable under the Washington Consumer Protection Act, RCW
9 19.86, *et seq.*). (See Notice of Claim against Stephen Lee Ates on file with this Court).

10 THE PARTIES

11 5. Plaintiffs are a married couple and reside in the State of Washington. They are
12 the legal owners of the real property/residence located in Mason County, Washington which
13 is the subject of the State Court Action against Debtor Ates and Kelly Ann Brace, which was
14 set for trial on July 1, 2021, before the Defendant and Debtor Ates filed for bankruptcy in
15 June 2021.

16 6. Family Classic Homes, Inc. (“FCHI”) and Ates are the debtors in *separate*
17 Bankruptcy cases pending before this Court. Debtor/Defendant FCHI is a licensed subchapter
18 S corporation registered within the State of Washington. In early June of 2021, the company
19 filed for a Chapter 7 bankruptcy, staying the continuation of the Plaintiffs’ State Court Action
20 against the company. This is Mr. Ates/FCHI’s second bankruptcy, Mr. Ates previously filed
21 and received a discharge in 2009. Debtor/Defendant Stephen Ates is the sole shareholder and
22 president of FCHI. There are no corporate officers of FCHI, apart from Mr. Ates. In June of
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2021, Stephen Ates filed for a Chapter 7 bankruptcy, staying the continuation of the State Court Action case against him individually.

7. Non-Debtor Defendant Kelly Ann Brace is and was married to Stephen Ates throughout the entirety of the corporation FCHI's existence. Mr. Ates and Ms. Brace constitute a marital community under the laws of the State of Washington. Brace and Ates filed for a martial dissolution on July 25, 2019. However, all acts undertaken by either of them in this matter up until this date were performed by and for the benefit of their marital community.

8. Debtor Ates operated FCHI as his alter ego, failed to adequately capitalize FCHI and perform corporate formalities required under Washington law, and commingled his personal assets and finances with the assets and finances of FCHI. As alleged below, Ates committed acts that evidence the use of the corporate shell of FCHI to attempt to shield him from personal liability and exposure for torts, breaches of contract, and other wrongful and/or fraudulent acts committed by him on behalf of himself and his marital community. Ates is personally liable for all tortious and wrongful conduct alleged below under the "responsible corporate officer" doctrine recognized by Washington law.

**COURSE OF PROCEEDINGS AND DEBTOR'S CONDUCT GIVING RISE TO THE
NONDISCHARGEABLE DEBT**

Insolvency of FCHI due to its liabilities exceeding its assets.

9. At all times relevant hereto, FCHI owned no assets, property, equipment, or tools. The tools that Ates used in connection with FCHI were owned by him personally.

1 10. At all times relevant hereto, FCHI had no substantial receivables. It generally
2 contracted with parties who made progress payments as the work progresses. Therefore, at
3 any given time, it did not have any substantial receivables.

4 11. As of the date of its bankruptcy filing, FCHI filed a schedule of assets and
5 liabilities. According to this schedule, its total assets at the time of filing the bankruptcy were
6 \$366,823.13 in assets, and \$1,532,110.66 in liabilities. However, the totality of the listed
7 assets on the bankruptcy schedules were receivables. Given that the company is bankrupt
8 under Chapter 7, it is improbable that the company has even this number of receivables, since
9 it will have ceased work in progress on a number of construction projects, thereby making
10 collection of such receivables difficult.

11 12. Since August of 2015, through the present date, FCHI has had significant
12 unpaid outstanding tax liabilities. The company had Notice of Federal Tax Liens filed against
13 it on 08/19/15 in the amount of \$15,018.23; a Notice of Federal Tax Lien filed against the
14 company on 2/1/16 for \$10,748.08; a Notice of Federal Tax Lien filed against the company on
15 3/21/16 in the amount of \$11,173.10; a Notice of Federal Tax Lien filed against the company
16 on 5/2/16 in the amount of \$36,893.88; and a Notice of Federal Tax Lien filed against the
17 company on 3/20/17, in the amount of \$5,257.18.

18 13. In addition to the above tax liens, FCHI also had a tax warrant filed by the
19 Department of Employment Securities on 9/1/16.

20 14. At all times relevant hereto, including from August of 2015, through the
21 present date, FCHI's liabilities exceeded its assets.
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Insolvency of FCHI due to it being unable to pay its debts in the ordinary course of business.

15. In addition to the foregoing, Family Classic Homes' bank account at Timberland Bank was the subject of at least 6 separate garnishments by the Department of Labor and Industries, for unpaid taxes. This occurred on 6/4/18 in the amount of \$1,000; 7/9/18 in the amount of \$2,000; on 1/24/19 in the amount of \$1,000; on 4/19/19 in the amount of \$5,000; on 5/2/19 in the amount of \$3,000; and on 6/20/19 in the amount of \$3,000.

16. In addition to the foregoing, between 10/3/18 and 12/20/19, the company's bank accounts at Timberland Bank and Wells Fargo Bank were overdrawn on 28 separate occasions. The account was overdrawn before, during, and after the Gibson project, including virtually every single month during the project. These accounts were overdrawn despite Mr. Ates failure to pay for necessary and promised costs of the Gibson's home construction.

17. In addition to the foregoing, between 2017 and date, FCHI was the subject of over 13 separate civil lawsuits filed by disgruntled customers, taxing authorities, or unpaid materialmen.

18. In addition to the above, FCHI repeatedly requested funds from the Plaintiffs before such sums were due, and in order to justify such payments, Mr. Ates repeatedly referred to the company's inability to pay subcontractors and materialmen. Mr. Ates further, repeatedly represented to Plaintiffs that he was "overbudget" on their project.

19. Further, in relation to the construction of the Plaintiffs' residence, FCHI failed to pay subcontractor sums that were due and owing and this resulted in the filing of a mechanic's lien against the Gibson Residence.

1 20. Based on the above garnishments, overdrawn bank accounts and unpaid
2 subcontractors, FCHI was not able to pay its debts as they became due in the ordinary course
3 of business before contracting with the Plaintiffs.

4 **When entering the contract with the Plaintiffs, FCHI was engaged or about to engage in**
5 **a business transaction for which the remaining assets of the debtor were unreasonably**
6 **small in relation to the business or transaction.**

7 21. At the time of contract signing, FCHI had \$6,000 total in the two corporate
8 accounts. FCHI had allegedly spent approximately \$12,000 on Plaintiffs' plans, permits and
9 clearing. Mr. Ates had spent \$57,000 of Plaintiffs' deposit on his personal living expenses,
lifestyle, and other unpaid corporate obligations.

10 22. At all times relevant hereto, the assets of FCHI were unreasonably small in
11 relation to capitalization required for FCHI to perform the Gibson contract.

12 **Personal use of the corporate accounts by Steven Ates for his own benefit and the**
13 **benefit of his marital community.**

14 23. At all times relevant hereto, FCHI maintained two bank accounts, one at
15 Timberland Bank and one at Wells Fargo Bank.

16 24. Between 8/2/17 and 2/1/21, Ates made a total of 3,308 personal expenditures
17 approximating \$647,650.72.

18 25. The above figure represents the funds that appear as draws to Steven Ates,
19 according to FCHI's accounting records. However, Ates did not always make entries in
20 QuickBooks for his withdrawals. In 2019 alone Mr. Ates failed to report additional personal
21 withdrawals amounting to more than \$90,000, which have been omitted or mischaracterized
22 in the FCHI accounting records. In total, Mr. Ates withdrew more than \$190,000.00 from the
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1 FCHI corporate accounts, for the year 2019, all of which can be attributed to funds requested,
2 and received, for Plaintiffs' construction project.

3 26. At all times relevant hereto, Ates also used company employees to perform
4 services of a personal nature at his home, such as chopping wood or maintaining landscaping.
5 Ates did not pay FCHI anything for these services. Yet, the employee's wages were paid by
6 FCHI.

7 27. In addition to the above, Ates used materials that were purchased by FCHI for
8 improvements at his personal residence. Ates did not pay FCHI anything for such materials.
9 Yet, the company paid for such materials.

10 28. Based on the above, the figure of \$647,650.72 represents the minimum amount
11 that Ates has withdrawn from the company within 4 years of the date that this case was
12 commenced. In view of his failure to book all withdrawals, and his use of non-monetary
13 benefits from the company, through the use of company labor and material, his actual
14 withdrawals were likely substantially higher.

15 29. Kelly Ann Brace and Stephen Ates formed a marital community since the date
16 of their marriage until July 25, 2020. Kelly Brace did not work and relied on Steven Ates'
17 income from Family Classic Homes to maintain the marital community. Therefore, with the
18 possible exception of the admitted \$32,000 that Steven Ates spent on his mistress, all of the
19 draws that he took from the company were used to pay community expenses, and the marital
20 community benefitted accordingly.

21 **Personal use of the corporate accounts at the Instance of Kelly Brace.**
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1 30. In addition to the personal draws by Mr. Ates, Ms. Brace also received money
2 from FCHI. Despite not working for the company, Ms. Brace personally spent money from
3 the corporate accounts and received payments for her living expenses and for cash distributed
4 by Mr. Ates.

5 31. Although most of the above payments were accomplished by Stephen Ates, a
6 multitude of transfers from the company were accomplished at the instance of Kelly Ann
7 Brace, through her use of company debit cards, and through checks written on the company
8 account that were received by her, or used with her knowledge, to pay for her personal
9 expenses.

10 32. Ms. Brace routinely accepted and deposited checks made out to her from the
11 corporate accounts. Ms. Brace was previously Vice President of Family Classic Homes and
12 was aware that neither she nor Mr. Ates had any source of income outside of client deposits
13 made into the corporate accounts. Despite that knowledge, Ms. Brace spent from the
14 corporate debit card, accepted payments from the corporate accounts and lived off the
15 customer deposits made into those accounts.

16 33. During her deposition in the state court action, Ms. Brace reluctantly admitted
17 that, at least, the multitude of QVC purchases from the corporate accounts were made by her.

18 34. According to corporate records, there were a total of 342 instances of personal
19 expenses, taken out of FCHI's Timberland and Wells Fargo Bank accounts, by Kelly Ann
20 Brace, between 11/7/17 and 2/2/21, for a total of \$45,002.56. This lengthy pattern of
21 spending indicates both knowledge and intention to convert Plaintiff's funds to Ms. Brace's
22 own personal use.
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1 **The Money Taken from the FCHI Corporate Accounts Was Done Without Any**
2 **Reasonable Equivalent Value Being Received.**

3 35. At all times relevant hereto, Mr. Ates did not collect a salary from the
4 corporation and did not have an established rate of compensation.

5 36. Nor was Ates an employee of FCHI, at all times relevant hereto. Mr. Ates did
6 not track his time on an hourly basis. Nor did FCHI have any agreement to pay him
7 compensation. In his deposition in the State Court Action, Mr. Ates acknowledged that he did
8 not consider himself to be a FCHI employee, and his receipts (if any) from the company took
9 the form of a shareholder distribution, based on the profits of the company.

10 37. At all times relevant hereto, Mr. Ates did not treat his own distributions as
11 wages. He did not withhold any form of payroll tax from his distributions, whether for social
12 security or Medicare taxes. Nor did he pay for industrial insurance to the State of
13 Washington, based on his own hours, nor did he make any contributions to the Washington
14 State Department of Employment Securities, based on his own labor.

15 38. Similarly, Kelly Ann Brace did not perform any services on behalf of FCHI,
16 whether as an employee or subcontractor. She likewise did not transfer any property of value
17 to the company, in consideration of her substantial withdrawals.

18 39. At all times relevant hereto, FCHI did not receiving anything of value in
19 exchange for the transfers of funds from FCHI to Ates and Brace.

20 40. Review of the corporate bank accounts reveals a pattern of spending more
21 indicative of a personal spending account than a corporate business account.

22 **Failure to Follow Corporate Formalities.**

1 41. At all times relevant hereto, Mr. Ates used FCHI's bank accounts as his own
2 personal bank accounts, paying a wide array of personal expenses directly from the company
3 bank accounts.

4 42. The expenses paid from the company's bank account include, without
5 limitation, payment on the mortgage to Ates' home, groceries, online purchases, personal auto
6 repairs, clothing purchases, fuel, medical bills, personal travel expenses, payments to personal
7 creditors, rent on his wife Kelly Ann Brace's apartment, personal care services, restaurants,
8 retail store purchases, legal fees for personal expenses, jewelry purchases, veterinarian
9 services, online movies, hotels, and substantial cash withdrawals.

10 43. In addition to the foregoing, Stephen Ates made a debit card available to his
11 wife, Kelly Ann Brace, who also made a wide array of personal expenses from the company's
12 bank accounts.

13 44. At all times relevant hereto, Mr. Ates drew from the FCHI corporate accounts
14 without regard to corporate liabilities or obligations. Since 2016, this has resulted in
15 corporate insolvency.

16 45. At all times relevant hereto, Mr. Ates spent personally out of the FCHI
17 corporate accounts and there was no separation of finances for him personally. He received
18 warnings not to do this from both his accountant and bookkeeper, and therefore this
19 comingling was performed intentionally. Mr. Ates successfully received a debt discharge
20 through bankruptcy in 2009, he is not unfamiliar with that reward.

21 46. Ates' failure to separate the company's finances, from his own finances,
22 proves Mr. Ates failed to follow corporate formalities with respect to his company. On
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1 4/19/2012, Ates filed an Amended Annual Report with the Secretary of State's office
2 indicating that he was President of the company, and that his wife, Kelly Ann Brace, was Vice
3 President. Mr. Ates removed Ms. Brace as an officer of the company, without any formal
4 notice to her or consent to action.

5 **Pattern of Behavior by FCHI and Ates to Drive up Revenue and Drive Down Expenses.**

6 47. As noted, due to the insolvency of FCHI, and the high spending habits of its
7 owner Stephen Ates, Defendant Ates was required to keep the company afloat through a
8 pattern of behavior in which he would induce his customers into paying large deposits for
9 purposes of lot preparation and permitting. These deposits were then spent on prior debt and
10 personal lifestyle. Mr. Ates would then induce customers into signing a fixed fee agreement,
11 but then increase its profitability through a combination of increasing its revenue from the
12 contracted amount, while decreasing its expenses through various means, with Mr. Ates
13 pocketing the difference.

14 48. At all times relevant hereto, Mr. Ates would engage in a pattern of increasing
15 his billings, by dishonoring the fixed fee nature of the agreement, and by increasing his
16 revenue through charging customers sums as "extras," when the same were already provided
17 for under the fixed fee nature of the agreements. He likewise engaged in a pattern of billing
18 for sums that were not then due under the terms of the agreement.

19 49. At all times relevant hereto, Mr. Ates would engage in a pattern of decreasing
20 his expenses, by using low-cost unregistered contractors who were less expensive; by cutting
21 corners and using substandard materials or construction methods; and by placing arbitrary
22 allowances for expenditures that were not identified in the contract. At all times relevant
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1 hereto, there was also a well-established scheme or pattern of not paying subcontractors,
2 which then resulted in delays, and lien filings.

3 50. The above pattern of behavior occurred with a multitude of prior customers of
4 FCHI, some of whom have their own independent pending actions against Ates and/or FCHI.

5 **Inducement to Contract through False Advertising.**

6 51. At all times relevant hereto, Ates advertised that FCHI provides the “highest in
7 industry standards” and that he had built more than 1000 homes since 1998.

8 52. At all times relevant hereto, Ates solicited misleading and deceptive Google
9 reviews from friends, family, and employees to bolster the on-line image of FCHI. The
10 Google reviews were intended to appear to be reviews by customers.

11 53. Plaintiffs relied upon the FCHI Google reviews and his advertised level of
12 experience, in deciding to enter into a contract with FCHI.

13 **Initial Professional Agreement with Plaintiffs.**

14 54. At all times relevant hereto, Plaintiffs owned property with a residence address
15 of 431 NE Haven Lake Dr., Tahuya Washington 98588 directly across the lake and visible
16 from Mr. Ates’ residence on Haven Lake in Washington State.

17 55. In June of 2018, Plaintiffs entered into a preliminary written Professional
18 Service Agreement (Agreement) with FCHI for preparation of their lot in anticipation of
19 building a residence.

20 56. Under the Agreement, Mr. Ates required a \$50,000 deposit, upfront, from
21 Plaintiffs for lot preparation, water hookups, power, plans, permit, and anything necessary to
22 obtain a building permit. Those funds were to be held in trust for the specific purpose of
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1 developing the Plaintiffs' lot. Mr. Ates separately required Plaintiffs to use his architect for
2 the plans and use his corporate and personal bank, Timberland, as their construction lender.
3 Under the same terms of that Agreement, FCHI was entitled to separate fees for its services
4 which would be waived in the event the Parties entered into a building contract. Pursuant to
5 the Agreement, Mr. Ates requested an additional \$25,000 on January 17, 2019, for installation
6 of a septic system.

7 **Written Construction Contract Formation.**

8 57. On or about February 25, 2019, the parties entered into a written contract for
9 the construction of the Gibson residence. This contract was for the gross sum of \$391,576.00.
10 However, per the Agreement, the previous deposit of \$75,000 was to be applied toward the
11 purchase price.

12 58. The contract was a fixed fee contract. Under the contract, payments would be
13 due to FCHI based on progress to date. Per the contract, FCHI was responsible to pay all
14 costs of construction pursuant to the contract documents.

15 59. The contract contained a warranty that all work would be performed in
16 accordance with the applicable building codes, and that all work would be performed in a
17 workmanlike manner.

18 60. The contract called for FCHI to provide competent and suitable personnel to
19 perform the work.

20 61. The contract called for completion of the residence by mid-June of 2019.
21 Although this specific date does not appear in the contract, the contract contains provisions
22 for completion beyond the agreed date, in the event of circumstances beyond the control of
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1 the contractor. Concurrent with the execution of the agreement, Ates provided to the
2 Plaintiffs an estimated completion date, in writing, of mid-June 2019, which became
3 incorporated into the agreement by reference.

4 62. Under the terms of the contract, Ates was responsible for all designs and
5 permitting. Under the contract, the parties agreed that any changes to the contract be
6 authorized by a written change order signed by the owner and the contractor.

7 63. The contract had one attachment that described the promised materials. Prior
8 to contract signing, Plaintiffs requested clarification regarding the materials list. Plaintiffs
9 received vague clarifications from Mr. Ates. Although the contract was signed on February
10 25, 2019, the materials list was signed several weeks after, on March 17, 2019. Mr. Ates did
11 not change the materials list to conform to any prior verbal representations.

12 **Fraudulent Inducement to Contract.**

13 A. Intent to use unregistered contractors.

14 64. In order to induce the Gibsons into signing the written agreement, Ates
15 committed numerous misrepresentations concerning the manner in which he intended to
16 construct the residence, consistent with the above established pattern of behavior.

17 65. According to the contract terms, only qualified, licensed, and registered
18 subcontractors would be used.

19 66. Due to large personal draws, Mr. Ates was routinely accepting the lowest bid
20 from a subcontractor. Unregistered subcontractors were often hired to work on the FCHI
21 projects. These same illegal subcontractors were then used over the course of many other
22 projects.
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1 67. Ates testified in his deposition, in the State Court Action, that he intended to
2 use the same basic crew on the Gibson residence that he had used on previous jobs.

3 68. Ates has acknowledged knowing that some of the subcontractors he was
4 planning to use were unregistered, in violation of Washington State law and the contract
5 between FCHI and Plaintiffs.

6 69. At all times relevant hereto, Ates was aware that all 4 subcontractors (which
7 were proven to be unregistered in the State Court Action case via a motion for partial
8 summary judgment) were unregistered, in violation of the contract and RCW 18.27, et seq., at
9 the time of contracting.

10 70. Ates intentionally misrepresented his intention to use only registered
11 subcontractors in order induce the Gibsons into signing the construction contract. The
12 Gibsons relied upon this misrepresentation in entering into the construction contract with
13 FCHI. The use of registered subcontractors was a material condition to the contract, and the
14 Gibsons would not have entered into the contract, but for this misrepresentation of intent.

15 B. Misrepresentation regarding Intent to Build Home per Plans.

16 71. Mr. Ates falsely promised the Gibsons that the house would be built in four to
17 five months after the permit was granted. He falsely promised that he would be scrutinizing
18 the quality of the construction, and that at the end of the project Plaintiffs would receive a full
19 accounting, along with invoices and receipts, explaining all of the costs for their construction.

20 72. Plaintiffs reasonably relied on Mr. Ates' promises.

21 73. In fact, Mr. Ates had no intention of building the Plaintiffs' home to code or
22 contract, or fulfilling the promises discussed above.
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1 74. By July 31, 2018, Mr. Ates had spent all but \$8,000 of Plaintiffs' initial
2 payment of \$50,000, which was to be held in trust, on other jobs and personal lifestyle.

3 75. Mr. Ates' contract violations were a part of a deliberate process to keep his
4 costs well below what contract performance would require. Mr. Ates' signatures appear on
5 prior tax filings, acknowledging the corporation's gross insolvency. At all times that Mr. Ates
6 was drawing large amounts of money from the corporation, for his personal use, he was fully
7 aware that the corporation would not be able to pay its liabilities.

8 76. Also, due to the large personal draws from the FCHI accounts, Mr. Ates failed
9 to timely pay subcontractors, or would only partially pay the subcontractors. This resulted in
10 liens to consumers, including the Plaintiffs.

11 77. Short-paying subcontractors was part of an overall scheme engaged in by Mr.
12 Ates to maximize profit to himself. It is a scheme he used on multiple projects.

13 78. At the time of contracting, in February 2019, Mr. Ates represented to the
14 Plaintiffs that he would be able to complete construction by mid-June of 2019.

15 79. Consistent with the above established pattern of behavior with other customers,
16 this was a false and intentionally unrealistic estimate of a completion date, designed to
17 procure the Gibsons as customers.

18 80. The intentionally unrealistic estimate of a completion date was relied upon by
19 the Gibsons in entering into the contract. The Gibsons would not have entered into the
20 contract, but for these misrepresentations regarding quality of construction, skill of
21 workmanship, and time of completion.

22 C. Misrepresentation of intent to abide by agreed billing practices.
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1 81. As noted above, the February 2019 contract between the parties calls for a
2 fixed fee contract. It also calls for any change orders to be in writing and to be signed by both
3 parties. It also called for monthly draws being subject to site inspections from Timberland
4 Bank, based on the progress to date.

5 82. Consistent with the above established pattern of behavior with other customers,
6 Ates made knowingly false promises at the time of contracting.

7 83. Ates had no intention to abide by the promise of a fixed fee contract. He
8 intended at the outset of the project to fraudulently claim increased costs of construction by
9 falsely characterizing as change orders, portions of the work that were already covered by the
10 existing terms of the fixed fee agreement.

11 84. Ates had no intention to abide by the requirement that change orders be in
12 writing. Instead, he intended to disregard contract documents regarding quality of materials
13 and opt for the cheapest materials he could procure and pocket the difference.

14 85. Mr. Ates likewise did not intend to abide by the provisions relating to progress
15 payments. Instead, he intended to bill for work that he had not yet completed, as he has done
16 repeatedly with previous customers.

17 86. The misrepresentations concerning his intent to following contractual payment
18 terms were made to induce the Gibsons into signing the construction agreement. These
19 provisions were material to the Gibsons decision to enter into the agreement, and they would
20 not have entered into the agreement without these promises.

21 **Willful Acts/Breach of the Contract by FCHI/Ates.**
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1 87. During the construction of the Gibsons' residence, FCHI/Ates intentionally
2 violated the February 2019 construction contract in multiple ways:

- 3 a. FCHI/Ates failed to complete construction within the time promised. At
4 deposition, Mr. Ates admitted that he had not completed a home construction
5 in five months, since 2011.
- 6 b. FCHI/Ates failed to build the house to code specifically, defective slab, no
7 cross bracing on the deck, lack of venting, defective stairs, and lack of deck
8 railings (banisters and hand grabs). In fact, Mr. Ates either ordered or
9 approved the removal of insulation from the Plaintiffs' slab, prior to
10 installation, and then repeatedly covered it up. Plaintiffs had to perform a core
11 sample to establish the slab defects.
- 12 c. FCHI/Ates failed to correct a known design defect. Mr. Ates admitted, after
13 the fact, that he submitted a defective design to engineering because making
14 the correction was "holding up" the architect.
- 15 d. FCHI/Ates used unregistered subcontractors. Despite promising to use
16 qualified and registered subcontractors, Mr. Ates had predetermined that he
17 would use the same unregistered subcontractors that he had used on previous
18 jobs. During discovery, Mr. Ates repeatedly, falsely represented, that the
19 framers were working under a registered corporation, when no payments were
20 ever issued to that corporation. Plaintiffs had to have Labor and Industry
21 investigate, due to Mr. Ates denials.
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- 1 e. FCHI/Ates failed to supervise the subcontractors and falsely claimed that he
2 was supervising.
- 3 f. FCHI/Ates failed to construct in a workmanlike manner and continuously
4 covered up defects.
- 5 g. FCHI/Ates failed to pay subcontractors (lien) and falsely claimed he was “over
6 budget” on Plaintiffs’ project.
- 7 h. FCHI/Ates substituted inferior materials for those required in the contract, after
8 signing and submitting the materials list to the bank for approval.

9 88. Mr. Ates’ architect failed to correct a design defect in the Plaintiffs’ plans. Mr.
10 Ates was aware of the design defect but planned to “fix it in the field.” Mr. Ates did not fix
11 the design defect.

12 89. In January of 2019, Mr. Ates told Plaintiffs that he would need more money if
13 they wanted to get started on a septic, even though he already had Plaintiffs’ \$50,000 deposit
14 from 2018. Despite this, Plaintiffs provided Mr. Ates with a check for an additional \$25,000
15 deposit for the septic system. Those funds were to be held in trust for the specific purpose of
16 installing a septic system. They were not used for that purpose.

17 90. Due to Mr. Ates’ spending of Plaintiffs’ \$75,000 deposit, which was to be held
18 in trust, on himself and other debts incurred as result of his personal draws, FCHI became
19 unable to build Plaintiffs’ home to code or contract.

20 91. A permit was granted on March 8, 2019, and construction of the residence
21 started at that time.
22
23

1 92. The Plaintiffs' expert in the State Court Action, Dave Stewart, wrote a Report
2 documenting the material substitutions made by Ates/FCHI.

3 93. FCHI/Ates sent the first invoice to Plaintiffs on April 25, 2019, for \$59,000.
4 There were multiple unpaid subcontractors at that time. By April 30, 2019, Ates had spent
5 less than \$30,000 on expenses related to the Plaintiffs' home construction. He had collected
6 \$134,000 and had \$56,000 in the corporate accounts.

7 94. In May of 2019, Mr. Ates began complaining about not having enough money
8 to pay for materials. Mr. Ates repeatedly implied that he was losing money on Plaintiffs'
9 project and that that he/Plaintiffs were overbudget. This was part of Mr. Ates' pattern of
10 conduct to get his customers to pay, above and beyond, what was both fair and in the
11 contracts.

12 95. At all relevant times hereto, Mr. Ates continued this process of submitting
13 invoices to the Plaintiffs while complaining that the Plaintiffs' project was overbudget
14 throughout the project.

15 96. Plaintiffs fronted money for materials that were required to be purchased by
16 FCHI under the construction contract.

17 97. Plaintiffs agreed to a lesser quality heating system, at their residence, due to
18 Ates' ongoing ruse of being "over budget" on their project. Mr. Ates' statements regarding
19 being over budget were false.

20 98. On June 20, 2019, Mr. Ates gave Plaintiffs a false invoice for costs of
21 materials already required by contract and for plumbing and electrical "upgrades" that were
22 not in the estimates. Mr. Ates created invoice 394, despite none of the work being performed,
23

1 in order to receive quick cash out of the Plaintiffs' contingency funds. At the same time Mr.
2 Ates generated Invoice 394, his corporate account was being garnished by the Washington
3 Department of Labor and Industries and he was preparing to take a vacation.

4 99. In July 2019, Plaintiffs asked Mr. Ates why the concrete basement slab of the
5 residence appeared devoid of necessary components (i.e., under slab insulation, gravel,
6 concrete slab reinforcement) when they looked at trenches cut in the slab. When questioned,
7 Mr. Ates sent photographs to the Plaintiffs showing insulation laid on the ground within the
8 foundation walls (before the slab was to be poured). This was a false statement made to
9 conceal the fact that Mr. Ates ordered the insulation removed from the slab area prior to
10 pouring the slab.

11 100. When Plaintiffs did a core sample of the basement slab proving no insulation,
12 wire reinforcement, or gravel were in/under the slab, Mr. Ates reacted with hostility and
13 accused the Plaintiffs of trying to "screw" him and he then threatened to stop work. Plaintiffs
14 hired another builder to oversee and supervise the slab corrective work since Mr. Ates
15 provided no site supervision himself.

16 101. Mr. Ates threats to stop work is part of a pattern of behavior used on other
17 consumers, in addition to Plaintiffs, to coerce acceptance of poor-quality work, contract
18 substitutions, and compensation over and above that agreed to in the contract.

19 102. At one point in the construction of the Gibsons' residence, a construction
20 engineer provided plans to correct the framing defects caused by the unregistered framers
21 hired by Ates. Plaintiffs asked Mr. Ates to also fix the design defects that had not been
22 addressed. Mr. Ates proposed to disengage a shear wall from its foundation, and move it, to
23

1 fix the design defect. This proposal was a substantial alteration from the engineering plans
2 with the potential for catastrophic damage to the home. Ms. Gibson insisted that Mr. Ates get
3 engineering approval for any shear wall alteration.

4 103. Mr. Ates plan to disengage the shear wall was part of his overall plan to avoid
5 following codes and plans, wherever he could to maximize profit and minimize effort.

6 104. Plaintiffs lost space for a stackable washer/dryer hookup on the main floor, due
7 to the design defects not corrected, as promised, by Mr. Ates.

8 105. In July 2019, Mr. Ates put his laborer, JC Mesker, in charge of the Gibsons'
9 home construction.

10 106. JC was not trained in residential construction and could not read building
11 plans.

12 107. In September 2019, Mr. Ates directed that drywall be installed in the Gibson
13 residence. The electrical was not complete, the removal and replacement of portions of the
14 basement slab (to install the missing and required under-slab components) was not complete,
15 venting for appliances and the whole house fan were not installed, and gas piping was not
16 connected to the fireplaces.

17 108. Mr. Ates ordered the drywall installed before the necessary electrical, gas and
18 air plumbing/venting was complete because he wanted to get money from Plaintiffs'
19 construction loan.

20 109. In October 2019, Plaintiffs were forced to purchase the appliances for the
21 residence (instead of FCHI, pursuant to the construction contract) because Ates claimed
22 FCHI/Ates did not have the funds to advance. Plaintiff have since discovered that between
23

1 July and November of 2019, during a time that the FCHI accounts were being garnished, Mr.
2 Ates spent more than \$32,000 of Plaintiff's construction funds on his then mistress.

3 **Termination of the Construction Contract.**

4 110. During October and November 2019, Mr. Ates threatened to stop work if
5 Plaintiffs did not authorize the bank to distribute all of the remaining funds.

6 111. In addition to the on-going defective construction, on December 13, 2019,
7 Plaintiffs discovered that the unregistered finish carpenters hired by Ates had damaged all of
8 cabinet drawer banks in the two kitchens of the residence.

9 112. Based on numerous material breaches of the contract by Ates/FCHI, the
10 Plaintiffs terminated the construction contract with FCHI on December 14, 2019.

11 113. On or about the time of contract termination, the unregistered finish carpenters
12 for the residence smashed the main floor kitchen quartz counter and concealed that damage
13 with melamine board and paper.

14 114. On December 14, 2019, Mr. Ates sent a text message to all subcontractors
15 claiming Plaintiffs owed Ates/FCHI several thousand dollars and advising they were not to
16 communicate with the Plaintiffs.

17 115. Concurrent with the Plaintiffs' termination of FCHI from the project, Mr. Ates
18 sent Plaintiffs a letter of termination, falsely claiming that FCHI was owed \$70,000. The
19 termination notices were sent at substantially the same time.

20 116. Prior to the date of termination of the construction contract, the project was
21 already several months delayed, due to the various defects in FCHI's performance as outlined
22 above. There were also a multitude of unremedied defects as of that date. Furthermore, FCHI
23

1 was refusing to perform any other or further work on the project unless and until the Gibsons
2 caused their lender to disburse the remaining portions of available construction financing to
3 FCHI. Ates testified during his deposition that he was demanding sums for future work that
4 he anticipated because he was “afraid” that any of his future work on the project would not be
5 paid.

6 117. However, the construction contract between the parties calls for work to be
7 paid in accordance with progress payments. Mr. Ates was demanding payments under the
8 contract that were not due as a precondition to further work. This was an anticipatory breach
9 of contract by Family Classic Homes, and its refusal to perform further work was tantamount
10 to a wrongful termination of the contract by Family Classic Homes.

11 118. Even without this constructive termination of the contract, at the point of
12 contract termination, FCHI/Ates were in substantial material breach of the contract, due to the
13 large number of unremedied construction defects, delays, poor work, and its history of using
14 unregistered contractors.

15 **Record Keeping and Credibility.**

16 119. Mr. Ates’ record keeping of FCHI expenditures was not contemporaneous.
17 Expenses were characterized and identified after the fact, applying characterizations favorable
18 to Mr. Ates personally.

19 120. Mr. Ates co-mingled all client funds into two different accounts out of which
20 he spent freely for his personal desires. Mr. Ates personal draws frequently left the corporate
21 accounts overdrawn.
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1 121. At all times material hereto, Mr. Ates altered the FCHI Quick Books reports,
2 after the fact, to hide his spending habits. He intentionally failed to provide accounting to
3 FCHI clients, in furtherance of this concealment. In fact, during discovery, Mr. Ates
4 substantially altered the Profit and Loss statement regarding Plaintiffs' project, in an effort to
5 cover up his theft of their funds.

6 122. Mr. Ates alterations of corporate recordkeeping (Quickbooks) is pervasive.
7 Few receipts were kept, checks were not identified, and debits were frequently identified after
8 the fact by Mr. Ates. The result is an ad hoc method of accounting that is varied by Mr. Ates
9 according to his audience.

10 123. Mr. Ates bankruptcy petition and 2018 tax filing claim FCHI had 2018 gross
11 revenue of \$996,193.00. However, a personal review of the two corporate bank accounts
12 reveals deposits of more than \$1,155,000.00.

13 124. During discovery in the State Court Action, Mr. Ates reported that he
14 personally withdrew \$105,000.00 from the corporate accounts in 2019. In his bankruptcy
15 petition he claimed \$85,000.00 in gross income for 2019. However, a review of Wells Fargo
16 and Timberland Bank Accounts reveals he personally spent \$197,000.00 from the corporate
17 accounts.

18 125. At all times material hereto, Mr. Ates submitted false reports to Washington
19 State Department of Labor and Industries regarding JC Mesker's responsibilities, as well as
20 his former construction supervisor, John Dipino, to avoid more than \$10,000 in Workers
21 Compensation premiums.
22
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1 126. Due to Mr. Ates pattern of creating corporate financial records “after the fact”,
2 it is virtually impossible to determine how client deposits and payments were applied. This
3 works very much to Mr. Ates favor as he is free to self-identify how client funds were spent.
4 For example, after Plaintiffs revealed that Mr. Ates had stolen more than \$90,000 of their
5 money, Mr. Ates simply “created” two more versions of the Profit and Loss Statement for
6 their job. According to the latest Profit and Loss Statement, Plaintiffs have two foundations
7 in their home with the equivalent of 150 cubic yards of concrete (the home is less than 2300 ft
8 sq).

9 **Washington Consumer Protection Act Violations.**

10 127. The unregistered framers used by Mr. Ates on the Gibsons’ residence caused
11 damage to the Plaintiffs’ property, by failing to follow engineering plans, causing necessary
12 delays and corrections.

13 128. The unregistered framers caused damage to Plaintiffs by failing to frame, in a
14 workmanlike manner, consistent with contract representations.

15 129. In September of 2019, Mr. Ates hired unregistered subcontractor, Cletus
16 Lovell, to install tiling in the loft bathroom and main floor bathroom of the Gibsons’
17 residence. Mr. Lovell’s work was very poor and incomplete. Plaintiffs had to pay additional
18 monies to complete and repair all of Mr. Lovell’s work, which included reinstallation of the
19 entire main floor shower, as Mr. Lovell used greenboard to back the tile and did not frame for
20 the shower surround.

21 130. Also, in October 2019, Mr. Ates hired unregistered subcontractors, Pro
22 Finishers, to paint the interior and exterior.
23

131. The unregistered painters did a poor job and applied a single coat of paint on the interior and exterior and did not paint the trim. This work needs to be re-done.

132. The unregistered subcontractor, Zach Irish, did a poor job of finishing and hanging doors.

133. After painting, Mr. Ates hired unregistered subcontractor, Zach Irish to install doors trim and cabinets in the Gibsons' residence.

134. Mr. Ates substituted inferior trim materials and doors and failed to install required facing on the fireplace, wainscot, and built-in cabinets.

135. The Court in the State Court Action has already found and ruled that FCHI and Ates are liable as a matter of law for three (3) violations of Washington Contractor Registration Act (RCW 18.27, *et seq.*) and the Washington Consumer Protection Act (RCW 198.86, *et seq.*) The Gibsons have suffered damages (which can and should be trebled up to \$25,000, per violation) from the work of the four (4) unregistered contractors, in violation of the Washington Contractor Registration Act (RCW 18.27, *et seq.*) and the Washington Consumer Protection Act (RCW 198.86, *et seq.*). Mr. Ates has admitted to knowing these subcontractors were unregistered and used all of them on prior or subsequent jobs.

Corporate Disregard.

136. At all times material hereto, Mr. Ates engaged in a practice of mischaracterizing personal expenses as corporate expenses. For instance:

a. Although the corporation owns no vehicles, Mr. Ates reported all vehicle insurance payments and all maintenance of the vehicles used by himself and Ms. Kelly Ann Brace, as a corporate expense and thus minimized his income tax liability.

1 b. Mr. Ates maintained at least four vehicles, including a Corvette, the costs of
2 which he claims as “corporate” expenses.

3 c. Mr. Ates paid multiple phone services, used personally by himself and his
4 family, and claims they are “corporate” expenses.

5 d. Mr. Ates reported the purchase of expensive jewelry, for his mistress, as a
6 “subcontractor” expense.

7 e. Mr. Ates reported meals for himself and his family as corporate expenses.

8 f. Mr. Ates mischaracterized large amounts of cash withdrawals, as corporate
9 expenses, by simply failing to account for the same as corporate draws.

10 g. Mr. Ates repeatedly mischaracterized large personal cash withdrawals as
11 subcontractor expenses, Labor and Industries payments, and even materials for the
12 Plaintiffs’ project.

13 h. Mr. Ates characterized payments for his divorce lawyer as a corporate legal
14 expense.

15 i. Mr. Ates characterized large personal loan repayments to his sister as corporate
16 expenses.

17 137. FCHI and Ates used the corporate form of FCHI to intentionally violate their
18 contractual duties to the Plaintiffs, and that disregard is necessary to avoid unjustified loss to
19 the Plaintiffs.

20 138. In effect, Mr. Ates has used FCHI as a personal enterprise, and has stripped the
21 assets of corporation. Ates used the corporation as an alter ego of himself, as a shareholder.
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1 Mr. Ates has essentially disguised his personal accounts as corporate accounts, to avoid
2 liability to both current creditors and past creditors.

3 139. Given Mr. Ates' touted construction experience (more than 1,000 homes
4 claimed as built), his abuse of the corporate structure to avoid creditors is knowing and
5 willful. Mr. Ates has spent years running up substantial corporate debt to fund his personal
6 lifestyle. This was done intentionally and with full knowledge that his creditor clients would
7 bear the expense. For instance, in July of 2019, while Mr. Ates was "pleading poverty" to the
8 Plaintiffs, he spent \$13,000 of their construction proceeds in less than one week, entertaining
9 his mistress. Mr. Ates previously filed bankruptcy in 2009 and received discharge for his
debts.

10 **Damages.**

11 140. By the time of the construction contract termination, Mr. Ates had collected
12 \$374,000 from Plaintiffs' and Plaintiffs' construction loan funds and allegedly spent \$253,000
13 on the Plaintiffs' home construction. FCHI was overdrawn by \$1,000 in the corporate
14 accounts at that time. In short, Mr. Ates had stolen more than \$120,000.00 from the Plaintiffs.

15 141. After contract termination, Plaintiffs received a lien on their property, brought
16 by the plumbing subcontractor, Port Orchard Plumbing. This was despite Mr. Ates invoicing
17 the Plaintiffs for more than \$6700 in alleged "plumbing overages" and invoicing the Plaintiffs
18 \$16,000 per contract. Despite Mr. Ates receiving invoices from the plumbing company, in
19 the amount \$12,400, he falsely billed Plaintiffs more than \$22,700, paid out \$5500 and
20 pocketed the rest. On January 6, 2020, Mr. Ates was still falsely claiming he was "counting
21 his losses" and claiming he would only pay the plumbers if Plaintiffs hired him back.

22 142. Plaintiffs will present proof to this Court regarding damages sustained, fixed,
23 and remaining.

1 **Delay Damages.**

2 143. Throughout the construction project, Ms. Gibson was taking multiple days off
3 work and delivering materials to the jobsite.

4 144. Mr. Ates was not seen on site by Plaintiffs after July 2019, with the exception
5 of one occasion in October 2019 (when Ates was bragging about how much money he was
6 making and trying to get the excavator to go into business with him), and another occasion on
7 December 20, 2019, when Ms. Gibson invited him to inspect the site.

8 145. The above breaches of the agreement by FCHI unreasonably delayed the
9 contract for a period of 8 months.

10 146. As a result of these unreasonable delays, the Plaintiffs suffered delay damages
11 to be proven at trial.

12 **Ates' Holding of Plaintiffs' Money in Trust.**

13 147. During a deposition in the State Court Action, Debtor and Defendant Ates
14 admitted that when he was getting money from his customers, he was holding them in trust
15 and that is something he "absolutely" agreed to do "for the Gibsons." This admission is
16 consistent with the contracts between FCHI/Ates and the Gibsons and includes the Plaintiffs'
17 construction deposit moneys and loan funds provided to FCHI/Ates referenced in Paragraphs
18 57, 58, 89, 90, and 140 above.

19 **COUNT I – AGAINST STEPHEN LEE ATES**

20 **(CORE CLAIM FOR NONDISCHARGEABLE DEBT FOR MONEY OBTAINED BY**
21 **FALSE PRETENSES, FALSE REPRESENTATIONS OR ACTUAL FRAUD)**

22 148. Plaintiffs repeat and reallege the allegations in ¶¶ 1 through 147.
23

1 149. Debtor Ates operated FCHI as his alter ego, failed to adequately capitalize
2 FCHI and perform corporate formalities required under Washington law, and commingled
3 his personal assets and finances with the assets and finances of FCHI. Mr. Ates made large
4 corporate distributions as draws, in violation of RCW 23B.06.200. As alleged above, Ates
5 committed acts that evidence the use of the corporate shell of FCHI to attempt to shield him
6 from personal liability and exposure for torts, breaches of contract, and other wrongful and/or
7 fraudulent acts committed by him on behalf of himself and his marital community. Ates is
8 personally liable for all tortious and wrongful conduct alleged below under the “responsible
9 corporate officer” doctrine recognized by Washington law. Mr. Ates was fully aware, at all
10 times, that his corporation was financially incapable of fulfilling its contract obligations to the
11 Plaintiffs.

12 150. Intent to use unregistered contractors. As alleged above, in order to induce the
13 Gibsons into signing the written construction agreement, Ates committed numerous
14 misrepresentations concerning the manner in which he intended to construct the residence,
15 consistent with the above established pattern of behavior.

16 151. According to the contract terms, only qualified, licensed, and registered
17 subcontractors would be used.

18 152. Due to large personal draws, and resultant corporate insolvency, Mr. Ates
19 routinely accepted the lowest bid from a subcontractor. Often unregistered subcontractors
20 were hired to work on the FCHI projects. These same illegal subcontractors were then used
21 over the course of many other projects.
22
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1 153. Ates testified in his deposition, that he intended to build the Gibsons' residence
2 using the same basic crew that he had used on previous jobs.

3 154. Ates acknowledged knowing that some of the subcontractors he was planning
4 to use were unregistered.

5 155. Ates was aware that all 4 subcontractors (which were proven to be unregistered
6 in this case) were unregistered at the time of contracting. Ates intentionally misrepresented
7 his intention to use only registered subcontractors in order induce the Gibsons into signing the
8 contract. The promises/misrepresentation were material, false, Ates knew they were false
9 when made, and Ates intended that the promises/representations be acted upon by the
10 Plaintiffs.

11 156. Plaintiffs were ignorant of the falsity of the promises/representations;
12 reasonably relied on Mr. Ates' promises/representations; and had the right to rely upon the
13 promises/representations. The Gibsons suffered damages as a result of the false
14 promises/representations.

15 157. Misrepresentation regarding Intent to Build Home per Code, Plans, or
16 Contract. As alleged above, Mr. Ates falsely promised/misrepresented the house would be
17 built four to five months after the permit was granted. He falsely promised/misrepresented
18 that he would be scrutinizing the quality of the construction and that at the end of the project
19 Plaintiffs would receive a full accounting, along with invoices and receipts explaining all of
20 the costs for their construction. When asked during deposition in the State Court action, Mr.
21 Ates could not state what building codes applied to Mason County. The
22
23

1 promises/misrepresentation were material, false, Ates knew they were false when made, and
2 Ates intended that the promises/representations be acted upon by the Plaintiffs.

3 158. Plaintiffs were ignorant of the falsity of the promises/representations,
4 reasonably relied on Mr. Ates' promises/representations, and had the right to rely upon the
5 promises/representations. The Gibsons suffered damages as a result of the false
6 promises/representations.

7 159. Mr. Ates promised to, but had no intention of, building the Plaintiffs home to
8 plans, code or contract. The promises/misrepresentation to build the Plaintiffs' home to plans,
9 code or contract were material, false, Ates knew they were false when made, and Ates
10 intended that the promises/representations be acted upon by the Plaintiffs.

11 160. Plaintiffs were ignorant of the falsity of the promises/representations,
12 reasonably relied on Mr. Ates' promises/representations, and had the right to rely upon the
13 promises/representations. The Gibsons suffered damages as a result of the false
14 promises/representations.

15 161. By July 31, 2018, before work had even begun, Mr. Ates had spent all but
16 \$8,000 of Plaintiffs' \$50,000 initial deposit, held in trust, on other jobs and personal lifestyle.

17 162. Mr. Ates' contract violations were a part of a deliberate process to keep his
18 costs well below what contract performance would require.

19 163. Also due to the large personal draws from the FCHI accounts, Mr. Ates failed
20 to timely pay subcontractors or partially paid subcontractors. This resulted in liens to
21 consumers, including the Gibsons.
22
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1 164. Short paying subcontractors was part of an overall scheme engaged in by Mr.
2 Ates to maximize profit to himself. It is a scheme he used on multiple projects.

3 165. At the time of contracting, Mr. Ates falsely represented to the Plaintiffs that he
4 would be able to complete construction by mid-June of 2019. Consistent with the above
5 established pattern of behavior with other customers, this was a false and intentionally
6 unrealistic estimate of a completion date, designed to procure the Gibsons as customers.

7 166. The promises/misrepresentation were material, false, Ates knew they were
8 false when made, and Ates intended that the promises/representations be acted upon
9 by the Plaintiffs.

10 167. Plaintiffs were ignorant of the falsity of the promises/representations,
11 reasonably relied on Mr. Ates' promises/representations, and had the right to rely upon the
12 promises/representations. The Gibsons suffered damages as a result of the false
13 promises/representations.

14 168. The intentionally unrealistic estimate of a completion date was relied upon by
15 the Gibsons in entering into the contract. The Gibsons would not have entered into the
16 contract but for this misrepresentation of intent.

17 169. Misrepresentation of intent to abide by agreed billing practices. As alleged
18 above, the contract between the parties calls for a fixed fee contract. It also calls for any
19 change orders to be in writing and signed by both parties. It also called for progress
20 payments, based on monthly draws and site inspections from Timberland Bank, based on the
21 progress to date.
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1 170. Consistent with the above established pattern of behavior with Plaintiffs and
2 other customers, Ates made knowingly false promises at the time of contracting.

3 171. Ates had no intention to abide by the promise of a fixed fee contract. He
4 intended at the outset of the project to increase the costs of construction by falsely
5 characterizing as change orders, portions of the work that were already covered by the
6 existing terms of the fixed fee agreement.

7 172. Ates had no intention to abide by the requirement that change orders be in
8 writing. Instead, he intended to unilaterally substitute inferior materials or omit materials
9 altogether to offset his large personal corporate draws.

10 173. Ates likewise did not intend to abide by the provisions relating to progress
11 payments. Instead, he intended to bill for work that he had not yet completed, as he has done
12 repeatedly with previous customers.

13 174. The misrepresentations concerning his intent to follow contractual payment
14 terms was done to induce the Gibsons into signing the construction agreement. These
15 provisions were material to the Gibsons decision to enter into the agreement, and they would
16 not have entered into the agreement without these promises.

17 175. The promises/misrepresentation were material, false, Ates knew they were
18 false when made, and Ates intended that the promises/representations be acted upon by
19 the Plaintiffs.

20 176. Plaintiffs were ignorant of the falsity of the promises/representations,
21 reasonably relied on Mr. Ates' promises/representations, and had the right to rely upon the
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1 promises/representations. The Gibsons suffered damages as a result of the false
2 promises/representations.

3 177. Debtor Ates' representations also constitute deceptive acts or practices in
4 violation of the Washington Consumer Protection Act, RCW 19.86, *et seq.*

5 178. The total amount of money the Debtors obtained from Plaintiffs, by such false
6 pretenses, false representations, or actual fraud will be proven at trial.

7 179. Consequently, the Debtor's debt to Plaintiffs is one for money, property, or
8 services obtained by false pretenses, false representations, or actual fraud, and is excepted
9 from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).

10 COUNT II - AGAINST STEPHEN LEE ATES

11 (CORE CLAIM FOR NONDISCHARGEABLE DEBT FOR FRAUD OR DEFALCATION
12 WHILE ACTING IN A FIDUCIARY CAPACITY, EMBEZZLEMENT, OR LARCENY)

13 180. Plaintiffs repeat and reallege the allegations in ¶¶ 1 through 179 of this
14 Complaint as if set forth fully herein.

15 181. Debtor Ates operated FCHI as his alter ego, failed to adequately capitalize
16 FCHI and perform corporate formalities required under Washington law, commingled his
17 personal assets and finances with the assets and finances of FCHI, and took massive personal
18 draws in violation of RCW 23B.06.400. As alleged above, Ates committed acts that evidence
19 the use of the corporate shell of FCHI to attempt to shield him from personal liability and
20 exposure for torts, breaches of contract, and other wrongful and/or fraudulent acts committed
21 by him on behalf of himself and his marital community. Ates is personally liable for all
22 tortious and wrongful conduct alleged below under the "responsible corporate officer"
23 doctrine recognized by Washington law.

1 182. As noted above, during a deposition in the State Court Action, Debtor and
2 Defendant Ates admitted that when he was getting construction funds from his customers, he
3 was holding the funds in trust and that is something he “absolutely” agreed to do “for the
4 Gibsons.” This admission is consistent with the contracts between FCHI/Ates and the
5 Gibsons and includes the Plaintiffs’ construction deposit moneys and loan funds provided to
6 FCHI/Ates.

7 183. Ates wrongfully took the Plaintiffs’ deposit money and construction loan
8 funds, held in trust, for his own personal gain. Mr. Ates lacked legal justification to use the
9 funds for his own personal gain. Mr. Ates deprived the Plaintiffs of those monies and did so
10 willfully and without any lawful justification.

11 184. Ates unlawfully embezzled, converted, and/or defalcated certain sums of the
12 construction moneys the Plaintiffs provided to FCHI/Ates, to be held in trust, referenced in
13 Paragraphs 61, 62, 94, 95, and 140 above, in violation of Washington law.

14 185. Because of this conversion, defalcation, and embezzlement, the Plaintiffs
15 suffered damages in an amount to be proven at trial.

16 186. Consequently, the Debtor Ates’ debt to Plaintiffs is one for fraud or defalcation
17 while acting in a fiduciary capacity, embezzlement, or larceny, and is excepted from
18 discharge pursuant to 11 U.S.C. § 523(a)(4).

19 **COUNT III - AGAINST STEPHEN LEE ATES**

20 **WASHINGTON CONSUMER PROTECTION ACT (RCW 19.86, ET SEQ.) VIOLATIONS**
21 **BY ATES FOR “DECEPTIVE ACTS AND PRACTICES” - CORE CLAIM FOR**
22 **NONDISCHARGEABLE DEBT FOR MONEY OBTAINED BY FALSE PRETENSES,**
23 **FALSE REPRESENTATIONS OR ACTUAL FRAUD)**

1 187. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 186 of
2 this Complaint, as if set forth fully herein.

3 188. Debtor Ates operated FCHI as his alter ego, failed to adequately capitalize
4 FCHI and perform corporate formalities required under Washington law, and commingled
5 his personal assets and finances with the assets and finances of FCHI. As alleged above, Ates
6 committed acts that evidence the use of the corporate shell of FCHI to attempt to shield him
7 from personal liability and exposure for torts, breaches of contract, and other wrongful and/or
8 fraudulent acts committed by him on behalf of himself and his marital community. For
9 multiple years Mr. Ates knowingly took large personal draws from the corporation in
10 violation of RCW 23B.06.200. Ates is personally liable for all tortious and wrongful
11 conduct alleged below under the “responsible corporate officer” doctrine recognized by
12 Washington law. Mr. Ates was fully aware that his conduct was illegal under Washington law
13 as is evidence by his signature on federal tax reporting documents and his alterations of
14 corporate financial records.

15 189. Debtor/defendant Ates violated the Washington Consumer Protection Act by
16 providing substandard work on and for the Gibsons’ Residence, hiring and using
17 unlicensed and unregistered contractors and workers to perform work on the Gibsons’
18 Residence, concealing defects and asserting they were not present, using and/or diverting
19 contract payments by Plaintiffs to pay other corporate and personal debts of FCHI and Ates
20 (instead of using it on the materials and licensed contractor labor required under the contract
21 with Plaintiffs and RCW 18.27 *et seq.*), and using materials paid for by Plaintiffs on other
22 jobs and/or own Ates’ personal residence.
23

1 190. Ates falsely promised, on repeated occasions, and never intended to complete
2 work on the Gibsons' Residence, by the deadlines set in multiple "schedules" Ates
3 provided to the Plaintiffs. Ates made false promises regarding completion times and costs
4 to multiple prior clients and to Plaintiffs. Those misrepresentation constitute deceptive
5 acts/practices in violation of RCW 19.86 *et seq.*; *Keyes v. Bollinger*, 31 Wash. App. 286, 640
6 P.2d 1077 (1982).

7 191. In violation of Washington law and the contract, Ates secretly hired and
8 used unregistered subcontractors during multiple aspects of the build of the Gibsons'
9 Residence. The unregistered subcontractors were unskilled and did not perform work in a
10 workmanlike manner and/or to code or contractual standards.

11 192. Ates engaged in "bait and switch" tactic of false representations and
12 promises in advertising and practice, in order to lure business away from other reputable
13 builders in the industry.

14 193. The acts and omissions, such as those described above in the afore-
15 mentioned paragraphs, have the capacity to deceive a substantial portion of the public.

16 194. The violations of RCW 18.27, *et seq.*, regarding the use of unregistered
17 sub-contractors, is a per se violation of RCW 19.86, *et seq.*

18 195. Ates' acts and omissions occurred in its/his business of construction which is
19 occurring within trade and commerce.

20 196. Ates' acts and omissions are repeatable and concern the public interest in the
21 effects this type of work has on the public and their property. Plaintiffs have learned of other
22
23

1 victims of the deceptive acts/practices by Ates, related to the Ates' construction of residences
2 for those victims. Those victims can be witnesses at the trial of this matter.

3 197. Ates' acts and omissions with regard to falsely promised completion deadlines,
4 false billing, and failure to pay sub-contractors, in violation of contract, is a tactic used on
5 other clients of Ates' and concerns public interest.

6 198. As noted above, the Court in the State Court Action has already found and
7 ruled that FCHI and Ates are liable as a matter of law for three (3) violations of Washington
8 Contractor Registration Act (RCW 18.27, *et seq.*) and the Washington Consumer Protection
9 Act (RCW 198.86, *et seq.*) The Gibsons' damages can and should be trebled up to \$25,000,
10 per violation, from the work of the four (4) unregistered contractors in violation of the
11 Washington Contractor Registration Act (RCW 18.27, *et seq.*) and the Washington Consumer
12 Protection Act (RCW 198.86, *et seq.*).

13 199. Plaintiffs were damaged in their property by the "deceptive acts and
14 practices" of Ates in an amount to be proven at trial.

15 200. Ates' "deceptive acts and practices" violations of RCW 19.86, *et seq.*
16 are a proximate cause of Plaintiffs' injury in and to their property, the Gibsons'
17 Residence, and for financial/monetary damages to Plaintiffs, in an amount to be proven at
18 trial.

19 201. Mr. Ates' actions were knowing and willful and part of a years long practice of
20 false promises, bait and switch and deceptive misuse of the corporate structure. At all times
21 Mr. Ates was fully aware of the consequences to his creditor clients. He has worked his entire
22 life in the construction industry and has owned and operated Family Classic Homes since
23

1 1998. He took his business and himself through a successful bankruptcy discharge in 2009.
2 Multiple other families have suffered losses similar to the Plaintiffs due to Mr. Ates scheme.

3 202. Consequently, the Debtor Ates' of RCW 19.86, *et seq.* "deceptive acts and
4 practices" debt to Plaintiffs is one for money, property, or services obtained by false
5 pretenses, false representations, or actual fraud, and is excepted from discharge pursuant to 11
6 U.S.C. § 523(a)(2)(A).

7 COUNT IV - AGAINST STEPHEN LEE ATES – CORE CLAIM FOR
8 NONDISCHARGEABLE DEBT FOR WILLFUL OF MALICIOUS INJURY UNDER 11
U.S.C. § 523(a)(6)

9 203. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 202 of
10 this Complaint, as if set forth fully herein.

11 204. Plaintiffs sustained injuries by the willful and malicious actions and omissions
12 of Mr. Ates, in persona, and as alter ego of FCHI. While some instances were pre-designed
13 with reckless disregard, other actions taken Mr. Ates were known by him to have a damaging
14 effect on Plaintiffs' property.

15 205. Mr. Ates intentionally removed code required components from Plaintiffs' slab
16 and then made material misrepresentations about its condition. Mr. Ates used corporate funds
17 to perform a substandard correction on the slab and applied the costs to proceeds from
18 Plaintiffs' construction.

19 206. Mr. Ates intentionally hired unregistered and poorly qualified subcontractors
20 and then willfully failed to supervise, in order to maximize his profit.

21 207. Mr. Ates falsely invoiced Plaintiffs for materials required by contract thus
22 "double billing" Plaintiffs for the same.
23

1 208. Mr. Ates invoiced and collected sales tax on materials not purchased.

2 209 Mr. Ates billed and collected money for payment of plumbing and then failed to
3 pay the plumber causing Plaintiffs to suffer a lien and double pay for that service.

4 210. Mr. Ates intentionally submitted a defective home design for engineering and
5 then failed to correct the defect after promising to do the same.

6 211. Mr. Ates spent corporate money intended for the Plaintiffs project, on himself
7 and insiders, knowing that the corporation would be unable to complete the Plaintiffs project.

8 212. Mr. Ates repeatedly, falsely represented that Plaintiffs' project was over budget
9 to induce Plaintiffs in purchasing materials, with their own funds, and to justify delays and
10 extra costs.

11 213. Mr. Ates repeatedly falsely represented that he was underpaid to coerce
12 Plaintiffs into authorizing invoices that Mr. Ates was not entitled.

13 214. Mr. Ates altered corporate records and made misrepresentations during
14 discovery, which evidences both knowledge and intent.

15 2145. Mr. Ates' practice of using subsequent customer funds to finance prior jobs and
16 personal lifestyle demonstrate a pattern of knowledge and recklessness with regard to Plaintiffs
17 interests.

18 216. Mr. Ates conversion of, at least, \$120,000 of Plaintiffs' money was both
19 willfully malicious and constitutes Theft under Washington State Law.

20 217. Consequently, the willful and malicious acts of Debtor Ates' has caused injury
21 to Plaintiffs and is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

22 COUNT V - AGAINST STEPHEN LEE ATES
23

1 BREACH OF CONTRACT – NON-CORE CLAIM UNDER SUPPLEMENTAL
2 JURISDICTION

3 218. PLAINTIFFS repeat and reallege the allegations of ¶¶ 1 through 217 of this
4 Complaint as if set forth fully herein.

5 219. Ates operated FCHI as his alter ego, failed to adequately capitalize FCHI and
6 perform corporate formalities required under Washington law, and commingled his personal
7 assets and finances with the assets and finances of FCHI. As alleged above, Ates committed
8 acts that evidence the use of the corporate shell of FCHI to attempt to shield him from
9 personal liability and exposure for torts, breaches of contract, and other wrongful and/or
10 fraudulent acts committed by him on behalf of himself and his marital community. Ates is
11 personally liable for all tortious and wrongful conduct alleged below under the “responsible
12 corporate officer” doctrine recognized by Washington law.

13 220. Ates failed to supervise the registered and unregistered sub-contractors or
14 monitor the quality of their work. Ates unlawfully hired and used unregistered and poorly
15 skilled sub-contractors to maximize personal profits.

16 221. Ates repeatedly failed to purchase materials and procure labor which delayed
17 performance under the contract and damaged the Plaintiffs. At the construction contract
18 termination, FCHI and Ates were 10 months into a 5 month build and were still causing
19 damage to the Gibsons’ Residence. Plaintiffs suffered loss of use of the Gibson Residence
20 while paying on the construction loans for the Gibson Residence. Plaintiffs suffered
21 economic loss by paying the higher interest rate required on the construction loan as
22 opposed to a conventional loan.

23 222. Ates billed Plaintiffs for costs not yet expended, and then pocketed the money

1 paid by Plaintiffs for those costs and used the payments to pay off unrelated debts of FCHI
2 and Ates. This caused Plaintiffs to spend additional sums of their own money to finish the
3 construction of the Gibson Residence and a lien against the Gibson Residence for services paid
4 for to FCHI and Ates.

5 223. Ates overbilled Plaintiffs for “cost plus” line items and overbilled Plaintiffs for
6 electrical add-ons and plumbing add-ons that were not provided. Ates charged the Plaintiffs tax
7 for materials and services not paid on or for the Gibson Residence.

8 224. Throughout the project, Ates substituted cheap and inferior materials,
9 without permission of the Plaintiffs.

10 225. Ates breached the Contract for the construction of the Gibson Residence by
11 failing to correct design defects and failing to build to code, plans, and contract. The Gibson
12 Residence has both design and construction defects which have resulted in its diminished
13 value. Plaintiffs have incurred significant expense in repairing faulty work and repairing
14 actual damage sustained (unbraced deck, damaged cabinets, holes in the floors, wavy walls
15 and floors, poorly applied molding, doors hung crooked, wrong sized materials, broken
16 quartz countertop, etc.).

17 226. Throughout the build, Ates mis-appropriated corporate funds, and funds held
18 in trust designated for completion of the Gibson Residence and used those funds for his
19 own personal gain. The Plaintiffs have incurred significant expenses as a result of the
20 misappropriation by delays in completion, faulty workmanship, and inferior materials.

21 227. The wrongful acts and omissions of the Defendant Ates constitute breach of
22 contract for the construction of the Gibson Residence for which Plaintiffs are entitled
23

1 to recover actual, compensatory, consequential, and general damages in amounts to be
2 proven at trial.

3 COUNT VI - AGAINST STEPHEN LEE ATES
4 UNJUST ENRICHMENT – NON-CORE CLAIM UNDER SUPPLEMENTAL
5 JURISDICTION

6 228. Plaintiffs incorporate by reference paragraphs 1 through 227 of this Complaint
7 as if set forth fully herein.

8 229. Ates operated FCHI as his alter ego, failed to adequately capitalize FCHI and
9 perform corporate formalities required under Washington law, and commingled his personal
10 assets and finances with the assets and finances of FCHI. As alleged above, Ates committed
11 acts that evidence the use of the corporate shell of FCHI to attempt to shield him from
12 personal liability and exposure for torts, breaches of contract, and other wrongful and/or
13 fraudulent acts committed by him, on behalf of himself and his marital community. For years
14 Mr. Ates has violated the Washington Business and Corporations Act. Ates is personally
15 liable for all tortious and wrongful conduct alleged below under the “responsible corporate
16 officer” doctrine recognized by Washington law.

17 230. In obtaining money from Plaintiffs, then not performing the required/sufficient
18 work, Ates has been unjustly enriched by said transfer of funds and his inaction. Ates has
19 been unjustly enriched by charging Plaintiffs and receiving money from them for work
20 that was not completed.

21 231. Plaintiffs are entitled to restitution of benefits and value conferred unjustly on
22 Ates.
23

COUNT VII – CORE CLAIM AGAINST STEPHEN LEE ATEES FOR FAILURE TO KEEP BOOKS AND RECORDS AND FALSIFYING BUSINESS RECORDS 11 U.S.C. § 727(a)(3).

232. Plaintiffs incorporate by reference paragraphs 1 through 231 of this Complaint as if set forth fully herein.

233. At all relevant times, FCHI was a liquid only asset entity whose significant assets, in 2018 and 2019, included the Gibson Residence Construction Project and the proceeds from the Timberland Bank construction loan and other loans taken out by Plaintiffs to fund the construction of the Gibson Residence by FCHI.

234. FCHI had multiple customers paying at various times as work progressed. Mr. Ates co-mingled all customer funds into two different accounts. Mr. Ates then transferred money back and forth between with accounts without explanation or purpose. Mr. Ates spent freely from the corporate accounts using customer proceeds for his mistresses, vehicles, personal life, entertainment, mortgage, divorce lawyer, spousal support, mortgage, groceries, etc. The corporate bank accounts show massive cash withdrawals and transfers without explanation. A multitude of checks are written without identifying whether it was a project for client or Mr. Ates' personal residence.

235. Mr. Ates has fabricated corporate profit and loss statements during discovery. His QuickBooks reports are created *ad hoc*, loosely based upon the bank transactions with minimal receipts to account for debits. Plaintiffs have been able to identify a few mischaracterizations only after an exhaustive comparison of various profit and loss statements, bank records and documents obtained from Mr. Ates' divorce court file and their own particularized knowledge of their project.

1 236. Mr. Ates did not preserve receipts for expenses paid on the Plaintiffs' project.
2 When his own accounting of spending was called into question, Mr. Ates falsely identified
3 expenses for other projects as expenses on behalf of the Plaintiffs' project. It was only through
4 vendor subpoena that Plaintiffs have been able to demonstrate the falsity of Mr. Ates' records.

5 237. Mr. Ates' bankruptcy petition claims income far below what appears in the
6 corporate bank accounts. His 2018 tax return also reflects income significantly below the
7 deposits made into the corporate accounts. His tax filing contains an accountant disclaimer
8 that no figures were verified and are based upon Mr. Ates' reports and can only be verified
9 through a laborious review of bank records which are replete with electronic debit transaction.

10 238. Mr. Ates' failure to maintain contemporaneous or accurate business records is
11 knowing, willful, and unjustified given his 20-plus years operating Family Classic Homes Inc.,
12 his self-reported 1,000 homes built, his admission that he has been repeatedly admonished by
13 his bookkeeper and professional accountant to maintain separate accounts, and his previous
14 bankruptcy filing to 2009. Mr. Ates' falsification of profit and loss statements is intentional
15 and designed to avoid accountability to creditors. The overall reckless and intentional
16 disregard of the basic accounting principle of collecting receipts combined with a purposeful
17 failure to maintain separate personal and client accounts, makes it impossible to ascertain his
18 business transactions or financial condition.

19 239. Consequently, due to Mr. Ates' knowing and willful failure to keep books and
20 records and falsifying business records, Mr. Ates should be denied discharge under 11 U.S.C.
21 § 727(a)(3).

22 COUNT VIII - AGAINST KELLY ANN BRACE INDIVIDUALLY FOR
23 CONVERSION – NON-CORE CLAIM UNDER SUPPLEMENTAL JURISDICTION

240. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 239 of this Complaint, as if set forth fully herein.

241. At all relevant times, Ms. Brace was aware that she had no possessory interest in the money held in the FCHI bank accounts.

242. At all relevant times, Ms. Brace was aware that FCHI business accounts were funded by client construction funds.

243. The checks and deposits, referred to above, were placed into the corporate accounts by Mr. Ates and were for the sole purpose of completing Plaintiff's residence.

244. Plaintiffs had a possessory interest in that money.

245. Ms. Brace deprived the Plaintiffs of their money willfully and without justification.

246. Because of this conversion, Plaintiffs suffered damage in an amount to be proven at trial.

247. Ms. Brace is individually liable to Plaintiffs for her own intentional conversion as well as conversion committed in concert with Mr. Ates.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray for entry of judgment against the Debtor Stephen Lee Ates/Defendants Stephen Lee Ates and Kelly Ann Brace as follows:

A. That the Court determine that a monetary portion of the damages suffered by the Plaintiffs is non-dischargeable as to Stephen Lee Ates pursuant to 11 U.S.C. § 523(a)(2)(A);

- 1 B. Enter judgment for the Plaintiffs and against the Debtor Stephen Lee Ates for damages
2 suffered by the Plaintiffs that are non-dischargeable pursuant to 11 U.S.C. §
3 523(a)(2)(A), in the amount proven at trial, plus applicable interest in accordance with
4 28 U.S.C. § 1961;
- 5 C. That the Court determine that a monetary portion of the damages suffered by the
6 Plaintiffs is non-dischargeable as to Stephen Lee Ates pursuant to 11 U.S.C. §
7 523(a)(4);
- 8 D. Enter judgment for the Plaintiffs and against the Debtor Stephen Lee Ates for damages
9 suffered by the Plaintiffs that are non-dischargeable pursuant to 11 U.S.C. § 523(a)(4),
10 in the amount proven at trial, plus applicable interest in accordance with 28 U.S.C. §
11 1961
- 12 E. That the Court determine that a monetary portion of the damages suffered by the
13 Plaintiffs is non-dischargeable as to Stephen Lee Ates pursuant to 11 U.S.C. §
14 523(a)(6);
- 15 F. Enter judgment for the Plaintiffs and against the Debtor Stephen Lee Ates for damages
16 suffered by the Plaintiffs that are non-dischargeable pursuant to 11 U.S.C. § 523 (a)(6)
17 in the amount proven at trial, plus prejudgment interest, plus applicable interest in
18 accordance with 28 U.S.C. § 1961;
- 19 G. Enter a judgment for the Plaintiffs for damages recoverable from under the “non-core”
20 claims pleaded above against the Debtor/Defendant Stephen Lee Ates and Defendant
21 Kelly Ann Brace, and their marital community, jointly and severally, in the amount
22
23

1 proven at trial, plus applicable pre-judgment interest under state law, and post-
2 judgment interest in accordance with 28 U.S.C. § 1961;

3 H. That the Court determine that a monetary portion of the damages suffered by the
4 Plaintiffs is non-dischargeable as to Stephen Lee Ates pursuant to 11 U.S.C. §
5 727(a)(3);

6 I. Enter a judgment against Ms. Brace individually for the “non-core” claim of
7 conversion plus applicable pre-judgment interest under state law.

8 J. For an award of attorney’s fees as allowable by law in an amount the Court determines
9 as reasonable;

10 K. For Costs of the suit incurred herein, and

11 L. For such other and further relief as this case may require and the Court deems just and
12 proper.

13 Dated: October 15, 2021.

14 **Respectfully Submitted,**

15
16 **By: s/Bradley S. Wolf**
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